

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #10 – Discussion of Island Areas Under
Government Code Section 56375.3**

BACKGROUND:

Staff's intent in scheduling this item for review was to provide the Commission with additional information regarding the changes in Government Code Section 56375.3 which took effect January 1, 2005. In addition, staff felt a possible discussion of the questions of the Cities, the County and the Commission regarding the criteria necessary to implement these provisions would be helpful to staff.

To open this review, staff would like to provide some basic information regarding the processing of an island annexation proposal. First, as the Commission is aware, Government Code Section 56375 already indicates that "a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is...surrounded or substantially surrounded by the city to which annexation is proposed,...is substantially developed or developing, is not prime agricultural land,...is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city." Therefore, the Commission does not have the ability to deny an island annexation that meets the criteria identified in Government Code Section 56375 no matter how much opposition is presented during its considerations. That section remains unchanged.

However, the changes to the “island annexation” provisions, those that remove the ability of landowners and registered voters to protest, are contained within Section 56375.3 and are outlined as follows:

Government Code Section 56375.3.

- (a) In addition to those powers enumerated in Section 56375, a commission shall do either of the following:*
- (1) Approve, after notice and hearing, the annexation to a city, and waive protest proceedings pursuant to Part 4 (commencing with Section 57000) entirely, if all of the following are true:*
 - (A) The annexation is initiated on or after January 1, 2000, and before January 1, 2007.*
 - (B) The annexation is proposed by resolution adopted by the affected city.*
 - (C) The commission finds that the territory contained in the annexation proposal meets all of the requirements set forth in subdivision (b).*
- ...*
- (b) Subdivision (a) applies to territory that meets all of the following requirements:*
- (1) It does not exceed 150 acres in area, and that area constitutes the entire island.*
 - (2) The territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands.*
 - (3) It is surrounded in either of the following ways:*
 - (A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.*
 - (B) Surrounded by the city to which annexation is proposed and adjacent cities.*
 - (C) This subdivision shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district.*
 - (D) Notwithstanding any other provision of law, at the option of either the city or the county, a separate property tax transfer agreement may be agreed to between a city and a county pursuant to Section 99 of the Revenue and Taxation Code regarding an annexation subject to this subdivision without affecting any existing master tax sharing agreement between the city and county.*

- (4) *It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:*
- (A) *The availability of public utility services.*
 - (B) *The presence of public improvements.*
 - (C) *The presence of physical improvements upon the parcel or parcels within the area.*
- (5) *It is not prime agricultural land, as defined by Section 56064.*
- (6) *It will benefit from the annexation or is receiving benefits from the annexing city.*

(Not included in this information are the provisions that will take effect following January 1, 2007, which reinstates the protest proceeding.)

Limitations on the processing of island annexations are outlined in Government Code Section 56375.4, which reads as follows:

(a) The authority to initiate, conduct, and complete any proceeding pursuant to subdivision (a) of Section 56375.3 does not apply to any territory that, after January 1, 2000, became surrounded or substantially surrounded by the city to which annexation is proposed. The authority to initiate, conduct, and complete any proceeding pursuant to paragraph (1) of subdivision (a) of Section 56375.3 shall expire January 1, 2007. The period of time between January 1, 2000, and January 1, 2007, shall not include any period of time during which, in an action pending in any court, a local agency is enjoined from conducting proceedings pursuant to paragraph (1) of subdivision (a) of Section 56375.3. Upon final disposition of that case, the previously enjoined local agency may initiate, conduct, and complete proceedings pursuant to paragraph (1) of subdivision (a) of Section 56375.3 for the same period of time as was remaining under that seven-year limit at the time the injunction commenced. However, if the remaining time is less than six months, that authority shall continue for six months following final disposition of the action.

(b) Between January 1, 2000, and January 1, 2007, no new proposal involving the same or substantially the same territory as a proposal initiated pursuant to paragraph (1) of subdivision (a) of Section 56375.3 after January 1, 2000, shall be initiated for two years after the date of adoption by the commission of a resolution terminating proceedings.

As noted, these island annexation provisions are scheduled to expire January 1, 2007; and, if an effective program is to be undertaken by the Cities and the Commission, time is of the essence. The processing changes included in recent legislation affect the following: the increase in acreage allowable from

75 acres to 150 acres and the elimination of the provision that such an area could not constitute a part of an unincorporated area that is more than 100 acres in area. Staff has undertaken a review of potential island areas within the County and has presented them on maps attached to this report for Commission discussion.

First, there are twelve totally surrounded island areas within the County's Cities which are less than the 150 acres. Some of these areas met the 75 acre criteria but have not been initiated by their respective Cities. They are identified on the maps attached to this report by City name with a numeric designation. The islands that meet the totally surrounded criteria include:

City of Chino #6	14 acres (this area has been initiated by the City of Chino as agreed to during the approval of its annexation of The Preserve Specific Plan area)
City of Colton #1	15 acres
City of Colton #2	80.4 acres
City of Loma Linda #1	29.3 acres
City of Loma Linda #2	100.8 acres
City of Loma Linda #3	3.2 acres
City of Loma Linda #4	49.8 acres
City of Rialto #1	73.5 acres
City of Rialto #2	23.8 acres
City of Rialto #3	81 acres
City of San Bernardino #6	74.3 acres
City of Victorville #1	87.6 acres

There is no question that the provisions of Government Code Section 56375.3 apply to these areas. It has been the Commission's practice to encourage the Cities to annex these areas through the use of three methods: (1) the reduction of filing fees to direct costs only to encourage the submission of the application; (2) commitments during considerations of a "desirable" annexation, those supported by property owners or consisting of vacant lands for development, to initiate the islands within a specific period of time, or (3) imposition of a condition requiring the initiation of the islands prior to the scheduling of protest proceedings on a desirable annexation. Over the past several years, nine (9) totally surrounded islands have been reviewed and approved by the Commission.

In addition, the map provided for the City of Needles identifies a totally surrounded island, which encompasses 18.9 acres. However, this island is entirely composed of Fort Mojave Indian tribal lands and could not be processed under the island annexation provisions where protest is removed.

As a sovereign nation, consent to the annexation must be received from the Bureau of Indian Affairs, as well as the Tribe, before it could take place regardless of Government Code Section 56375.3.

Following the adoption of the original island annexation provisions (AB 1555 – Longville in 1999), the Commission adopted its Policy #29 in January 2000 to address processing questions on its implementation. The elements of the Commission's policy read as follows:

1. *The Commission will not permit a city to reduce the size of an existing island through normal annexation proceedings for the purpose of allowing the remaining island to be processed under AB 1555 (Government Code Section 56375.3).*
2. *The Commission determines that notwithstanding the option provided in AB1555, the annexing city will be required to provide a hearing as the conducting authority for the island annexation. **Effective January 1, 2001, the element of this policy requiring the city to act as conducting authority is rescinded...***
3. *The Commission will define the term “substantially surrounded” on a case-by-case basis, through review of land uses, infrastructure, and patterns of service delivery within the island area and surrounding lands. No specific percentage of boundary contiguity will be applied across the board for all proposals purporting to be “substantially surrounded”.*

The area of the Commission's policy and the island statute that cause some concern relates to the determination of “substantially surrounded”. The Commission's policy indicates that it will be determined on a case-by-case basis, subjecting City staff to uncertainty in presenting these unpopular considerations to their City Councils for consideration. With the elimination of the provision requiring that the island territory not be a part of unincorporated area larger than 100 acres, staff wished to provide the Commission with a review of areas that could, in the staff view, comply with these directions.

Staff's criteria in reviewing these areas was that they would need to be peninsulas of territory, at a minimum surrounded on three sides by the corporate limit of the annexing city, and within the sphere of influence of the City. Staff's identification of these islands generally uses a street centerline as the fourth boundary of the island allowing for a clear, functional distinction of its limits. There are 38 areas identified on the maps which qualify under these provisions. The spreadsheet included as the preface to the attached maps provides an outline of the acreage for each of the islands. These acreage

figures were provided by the County Surveyor's office through a review of Assessor Parcel and Tax Rate Area maps.

One area of question relates to the area identified as "Montclair Island #2". This area calls into question the Commission's first policy in regard to annexations within the area reducing the size of the island. The City of Montclair has processed two annexations over the last three years along the southeastern border of the island area. The purpose of these annexations was to address issues of service delivery to anticipated developments, not an attempt to reduce the area to comply with these provisions. Staff's position is that the island existed prior to January 2000; it would have qualified with its pre-2000 boundary; and the annexations that have occurred have only modified this boundary. If the Commission is concerned about these previously annexed areas, the southern boundary of the area could be redrawn at Mission Blvd., removing the questions of Item #1 of the Commission's policy.

Many LAFCO staff members have pondered the criteria for a determination on substantially surrounded. Therefore, staff has provided an outline of the six LAFCOs within the State that established a threshold for making this determination. If the Commission wishes to revisit the issue of establishing a threshold for a determination regarding "substantially surrounded", the following provides an outline of those LAFCOs' policies:

Orange County	51% constitutes substantially
Napa County	2/3
Butte County	75%
Santa Cruz	75%
Stanislaus County	75% under certain circumstances
Tulare County	75%

As an example of policy language, the Napa LAFCO has adopted a policy that reads as follows:

"Substantially surrounded. For the purpose of applying the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act, most notably Government Code Section 56375, the subject territory of an annexation proposal shall be deemed "substantially surrounded" if it is within the sphere of influence of the affected city and two-thirds (66 2/3%) of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by the affected City."

In any of these cases, staff believes that the areas presented on the maps attached to this report would comply with the thresholds established.

While no specific action is required at this hearing, the Commission's discussion of the areas presented by staff will provide guidance to staff and the Cities concerning the implementation of these provisions. Staff has provided notice of this hearing to the Cities with island areas identified in this report and this hearing will provide an opportunity for them to express their questions concerning these areas to the Commission and staff.

/KRM

Attachment:

Listing of Areas with Acreages and Maps Identifying Potential Island
Areas